

Response

In re: Hays et al.

Serial No. 09/782,685

Filed: February 13, 2001

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**REMARKS**

As a preliminary matter, the Patent Office is requested to update the Attorney Docket No. to read 7539.120. Thank you.

Claims 1-13 remain pending.

Claims 1 and 3-13 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,336,136 to Harris. Claim 2 has been rejected under 35 USC 103(b) as being rendered unpatentable by Harris in view of U.S. Patent No. 5,826,267 to McMillan.

These rejections are respectfully traversed for the reasons given below and withdrawal of the same is respectfully requested.

Harris is not available as prior art under 102(e) because the presently claimed invention was conceived and reduced to practice prior to the December 24, 1999 filing date of Harris. Without Harris, McMillan alone cannot support the rejections.

The Declaration of Hensley and Hays submitted October 27, 2006 established that the inventors had conceived of the present invention before April 14, 2000, i.e., the filing date of Bluth. The Examiner accepted the Declaration, as evidenced by the withdrawal of Bluth.

Accompanying this response is a Declaration of Hensley and Hays dated July 12, 2007 (hereinafter “7/12/07 Declaration”). At the present time, efforts to obtain the signature of Mr. Hays have been unsuccessful. Applicant will continue to attempt to obtain Mr. Hays’ signature and submit the executed Declaration at the earliest possible date.

Attached to the accompanying 7/12/07 Declaration is Exhibit A, a hardcopy print-out of the software code existing as of February 29, 2000. (7/12/07 Declaration, ¶ 4). The 7/12/07 Declaration and Exhibit A establish the inventors’ efforts in reducing the invention to

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practice, as those efforts existed on February 29, 2000. A comparison of Exhibit A and the computer code as it existed on April 14, 2000 (as submitted with the October 27, 2006 Declaration) establishes the continuing diligence exercised by the inventors between February 29, 2000 and April 14, 2000. (7/12/07 Declaration, ¶ 6)

February 29, 2000 is the earliest check-in date established by the exhibits produced with earlier Declarations and Exhibit A. In actuality, development of the computer program checked-in on February 29, 2000 started much earlier than the December 24, 1999 filing date of Harris. (7/12/07 Declaration, ¶ 7) As the software was being developed, a master copy was retained on a main computer server. (7/12/07 Declaration, ¶ 8) As a routine, copies of the software code were checked out of the server to individual programmers for development. (7/12/07 Declaration, ¶ 8) The checked-out code was loaded on to individual work stations, where the development work took place and the software code was updated. (7/12/07 Declaration, ¶ 8) Periodically, the updated software code was uploaded from individual work stations to the main computer server. (7/12/07 Declaration, ¶ 8) This routine started well before December 24, 1999, and continued throughout development of the invention. (7/12/07 Declaration, ¶ 8)

Development of the software code continued diligently throughout the period of December 24, 1999 through February 29, 2000. (7/12/07 Declaration, ¶ 9) Per normal routine described above, software code updates made throughout this period were checked into the server for archive and organization purposes, and copies were routinely checked out of the server to work stations for development. (7/12/07 Declaration, ¶ 9)

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In or about January or February of 2000, the server containing the computer program code and all archived "checked-in" files crashed. (7/12/07 Declaration, ¶ 10) Extensive efforts to repair the server and recover data saved on the server were unsuccessful. (7/12/07 Declaration, ¶ 10) As a consequence, the server had to be replaced in late February of 2000. (7/12/07 Declaration, ¶ 10) All archived server records of the software code checked in during and prior to the December 24, 1999 through February 29, 2000 period were permanently and irrevocably lost because of the server crash. (7/12/07 Declaration, ¶ 10)

Fortunately, at least one copy of the most up-to-date software code as it existed and had been checked-out at the time of the server crash was saved to the individual work station computers for development purposes. (7/12/07 Declaration, ¶ 11) A copy of the software code was checked-out of the work station and checked into the replacement server on or about February 29, 2000. (7/12/07 Declaration, ¶ 11) Unfortunately, all historical, archived copies of the software code on the server at the time of the server crash, including all previous checked-in updates of the software code, were lost with the server crash. (7/12/07 Declaration, ¶ 11)

The files listed in Exhibit A were checked-into the replacement server on February 29, 2000, and are the same files that existed at the time of the server crash in or about January or February of 2000. (7/12/07 Declaration, ¶ 12) Preparation of these files loaded onto the new server had been ongoing for a period dating back almost a year before their February 29, 2000 check-in into the replacement server. (7/12/07 Declaration, ¶ 12)

Directory of C:\stephene\Patent3\Lifeclinic\LCServices\LCBroker

02/29/2000 12:35 PM

7,618 CoLCBroker.cpp

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02/29/2000 12:35 PM	2,531 CoLCBroker.h
02/29/2000 12:28 PM	4,596 Encryptor.cpp
02/29/2000 12:28 PM	982 Encryptor.h
02/29/2000 12:28 PM	1,368 errorMessage.h
02/29/2000 12:35 PM	727 idGen.h
02/29/2000 12:35 PM	12,637 ISLXmlCmdsImpl.h
02/29/2000 12:35 PM	11,816 LCBroker.cpp
02/29/2000 04:39 PM	35,554 LCBroker.dsp
02/29/2000 12:35 PM	1,137 LCBroker.idl
02/29/2000 12:35 PM	2,862 LCBroker.rc
02/29/2000 12:35 PM	853 LCBroker.rgs
02/29/2000 12:35 PM	476 LCBrokerps.mk
02/29/2000 12:28 PM	11,671 Logging.cpp
02/29/2000 12:28 PM	4,648 Logging.h
02/29/2000 12:28 PM	34,767 Registry.cpp
02/29/2000 12:28 PM	8,432 Registry.h
02/29/2000 12:28 PM	3,370 registryBase.cpp
02/29/2000 12:28 PM	815 registryBase.h
02/29/2000 12:28 PM	2,393 registryDB.cpp
02/29/2000 12:28 PM	681 registryDB.h
02/29/2000 12:35 PM	544 resource.h
02/29/2000 12:35 PM	1,582 rs.cpp

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02/29/2000 12:35 PM	315 StdAfx.cpp
02/29/2000 12:35 PM	3,474 StdAfx.h
02/29/2000 12:35 PM	5,751 xc.cpp
02/29/2000 04:39 PM	9,194 xcLCBroker.cpp
02/29/2000 12:37 PM	5,173 xcLCBroker.h
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02/29/2000 12:35 PM	21,520 xc_addInsurance.cpp
02/29/2000 12:35 PM	3,148 xc_changePassword.cpp
02/29/2000 12:35 PM	4,182 xc_createUser.cpp
02/29/2000 12:35 PM	302 xc_createUser.h
02/29/2000 12:35 PM	721 xc_delAudit.cpp
02/29/2000 12:35 PM	1,560 xc_delDiagnosis.cpp
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02/29/2000 12:35 PM	1,330 xc_DeleteCommands.h
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02/29/2000 12:35 PM	1,140 xc_deletePhysical.cpp

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02/29/2000 12:35 PM	1,834 xc_deleteReminder.cpp
02/29/2000 12:35 PM	1,465 xc_deleteSurgeryInfo.cpp
02/29/2000 12:35 PM	1,465 xc_deleteTherapyInfo.cpp
02/29/2000 12:35 PM	1,382 xc_deleteUnregisteredUser.cpp
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02/29/2000 12:35 PM	1,286 xc_delHcpSpecialty.cpp
02/29/2000 12:35 PM	1,959 xc_execSearch.cpp
02/29/2000 12:35 PM	234 xc_execSearch.h
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02/29/2000 12:35 PM	1,286 xc_getAddressInfo.cpp
02/29/2000 12:35 PM	1,047 xc_getAdmit.cpp
02/29/2000 12:35 PM	1,103 xc_getAllergyInfo.cpp
02/29/2000 12:35 PM	807 xc_getBeds.cpp
02/29/2000 12:35 PM	2,668 xc_getBiographicsInfo.cpp
02/29/2000 12:35 PM	2,672 xc_getBloodPressureReadings.cpp
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02/29/2000 12:35 PM	835 xc_getCompany.cpp
02/29/2000 12:35 PM	1,540 xc_getConvertPc.cpp
02/29/2000 12:35 PM	1,139 xc_getCurrConvertPc.cpp
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02/29/2000 12:35 PM	1,071 xc_getCurrLoa.cpp
02/29/2000 12:35 PM	1,127 xc_getCurrPreAdmit.cpp
02/29/2000 12:35 PM	1,126 xc_getCurrTransfer.cpp
02/29/2000 12:35 PM	1,286 xc_getDiagnosis.cpp
02/29/2000 12:35 PM	1,109 xc_getDisability.cpp
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02/29/2000 12:35 PM	1,416 xc_getImagingInfo.cpp

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02/29/2000 12:35 PM	1,469 xc_getImmunizations.cpp
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02/29/2000 12:36 PM	1,320 xc_getMassMailing.cpp
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02/29/2000 12:36 PM	1,241 xc_getPhone.cpp
02/29/2000 12:36 PM	1,102 xc_getPhysicalInfo.cpp
02/29/2000 12:36 PM	1,118 xc_getPhysicianInfo.cpp
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02/29/2000 12:36 PM	448 xc_insCpiMaster.cpp
02/29/2000 12:36 PM	429 xc_insCpiUser.cpp
02/29/2000 12:36 PM	435 xc_insDiagnosis.cpp
02/29/2000 12:36 PM	444 xc_insEncounter.cpp
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02/29/2000 12:36 PM	445 xc_insEncounterMap.cpp
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02/29/2000 12:36 PM	444 xc_insExternalCode.cpp
02/29/2000 12:36 PM	451 xc_insInternalCode.cpp
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02/29/2000 12:36 PM	1,488 xc_setHealthConditions.cpp

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02/29/2000 12:36 PM	1,679 xc_setImagingInfo.cpp
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02/29/2000 12:36 PM	31,186 xc_setInsurance.cpp
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02/29/2000 12:36 PM	449 xc_uptEmployment.cpp

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02/29/2000 12:36 PM	501 xc_uptEncounter.cpp
02/29/2000 12:36 PM	439 xc_uptEncounterHcp.cpp
02/29/2000 12:36 PM	542 xc_uptEncounterLog.cpp
02/29/2000 12:36 PM	462 xc_uptExternalCode.cpp
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02/29/2000 12:36 PM	448 xc_uptInsurance.cpp
02/29/2000 12:36 PM	476 xc_uptInsurancePlan.cpp
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02/29/2000 12:37 PM	441 xc_uptTransfer.cpp
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02/29/2000 12:31 PM	7,975 xmlParser.cpp

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02/29/2000 12:31 PM 6,106 xmlParser.h

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02/29/2000 03:23 PM	6,558 dialer.cpp
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02/29/2000 12:28 PM	982 Encryptor.h
02/29/2000 12:28 PM	4,224 filenameDelimited.cpp
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02/29/2000 12:28 PM	8,432 Registry.h
02/29/2000 12:28 PM	3,370 registryBase.cpp
02/29/2000 12:28 PM	815 registryBase.h
02/29/2000 03:23 PM	475 Resource.h
02/29/2000 03:23 PM	315 StdAfx.cpp
02/29/2000 03:23 PM	3,144 StdAfx.h
02/29/2000 03:23 PM	663 threadMain.cpp
02/29/2000 03:23 PM	264 threadMain.h
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02/29/2000 12:28 PM	2,463 filenameDelimited.h

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02/29/2000 03:24 PM	18,368 LCKioskServer.aps
02/29/2000 03:24 PM	837 LCKioskServer.clw
02/29/2000 03:24 PM	12,182 LCKioskServer.cpp
02/29/2000 03:24 PM	439 LCKioskServer.idl
02/29/2000 03:24 PM	2,584 LCKioskServer.rc
02/29/2000 03:24 PM	189 LCKioskServer.rgs
02/29/2000 03:24 PM	255 LCKioskServerps.def
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02/29/2000 12:28 PM	11,671 Logging.cpp
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02/29/2000 12:28 PM	3,370 registryBase.cpp
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02/29/2000 03:24 PM	315 StdAfx.cpp
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02/29/2000 03:24 PM	1,400 threadReceiver.cpp

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02/29/2000 03:24 PM 1,492 threadReceiver.h

02/29/2000 03:24 PM 2,123 threadServer.cpp

02/29/2000 03:24 PM 1,750 threadServer.h

The development of the computer files attached as Exhibit A unquestionably began well before December 24, 1999, and continued diligently through February 29, 2000.

(Declaration, ¶ 14) Given the detail and extensive volume of the computer code as it existed in January or February of 2000, i.e., at the time of the server crash, it is manifestly evident that creation of the code must have and did date back several months, well before the December 24, 1999 filing date of Harris. (Declaration, ¶ 14) According, conception and development of the invention predates the December 24, 1999 of Harris. (Declaration, ¶ 14)

Numbered paragraphs 15-29 of the accompanying Declaration and the attached Exhibits B, C, and D provide still further evidence that the invention was conceived of and either reduced to practice or was in the process of being reduced to practice before December 24, 1999.

For these reasons, Applicant respectfully requests reconsideration and withdrawal of the Section 102(e) and 103(a) rejections.

In view of the foregoing remarks, the present application is now believed to be in condition for allowance. The Examiner is asked to consider this response and pass the application to allowance.

Further and favorable consideration is requested.

Applicants have filed a petition for extension of time and a three-month petition fee herewith. In the event that the petition is missing or the three-month petition fee is missing or

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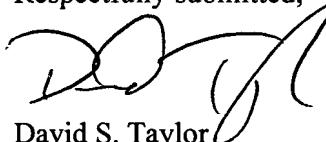
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deficient, the Patent Office is requested to accept this paper as a petition for an extension of time and is authorized to charge any inadequacy to Deposit Account No. 50-0548.

Should the Examiner have any questions, he is requested to contact the undersigned.

Respectfully submitted,



David S. Taylor  
Registration No. 39,045

Date: July 12, 2007

**BERENATO, WHITE & STAVISH, LLC**  
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